





VIRGINIA:

DEPARTMENT OF EDUCATION (SPECIAL EDUCATION)

Hearing Officer Decision

, by her mother, Ms.

v.

PUBLIC SCHOOLS (Local Education Agency "LEA")

For the Parent:

Melvin E. Yeamans, Jr. Esquire  
Kuchisky & Yeamans  
Attorneys at Law

For the LEA:

J. T. Tokarz  
Office of the County Attorney for  
Assistant County Attorney

Hearing Officer  
Raymond E. Davis  
VSB 05381

VIRGINIA:

DEPARTMENT OF EDUCATION  
DUE PROCESS HEARING

IN RE:

Pursuant to an appointment by letter dated February 3, 2004, from Dr. \_\_\_\_\_, Ph.D, Director, Exceptional Education and Support Services for \_\_\_\_\_ Public Schools, from the approved hearing officer's list in the Office of the Executive Secretary of the Virginia Supreme Court; and pursuant to Virginia Code Sections 22.1-213 et seq., 9-6.14: 14-1 et seq., and 34 CFR part 300, et seq., an impartial due process hearing was held before the undersigned Hearing Officer on the 10th and 11th of March, 2004, at the Planning Conference Room for \_\_\_\_\_ in the \_\_\_\_\_ Administration Building on \_\_\_\_\_, Virginia.

The due process hearing was requested in writing by the parent and filed on February 2, 2004 and the hearing officer was appointed as set forth above. The parent maintains that the education provided and the situations presented in the LEA deprive her child of a Free and Appropriate Public Education ("FAPE"). In the course of a day and a partial day's hearing, the parent and the LEA presented the testimony of witnesses and 262 exhibits were admitted or stipulated. Both parties were represented by counsel.

FINDINGS OF FACT

The Hearing Officer makes the following finds of fact:

1. The child was born on \_\_\_\_\_ and was currently in the fourth grade.

2. The child is currently being home schooled by her mother, who has an education and teaching background and has worked in the \_\_\_\_\_ school system. (Tr. 69).
3. The child has a disturbing history of school attendance and placement. She has been in 13 different placements since September 1999, and has been placed at 7 different schools as well as several homebound instruction during this period (Exhibit "Ex" 1); Transcript ("Tr") p. 196 ff.). She has been tardy and absent a significant amount of time. (Inter Alia Ex. 257; Tr. 251 ff).
4. The child has had various disability determinations and is currently classified as Other Health Impairment, Specific Learning Disability (Ex. 259). She is clearly eligible for special education and is in need of services.
5. The record is replete with the child's continuing behavioral problems in a school setting with both her peers, teachers and staff. (See exhibits and transcript). Most of the problems, many resulting in suspensions from school, have been deemed disability related (Ex. 41, 66, 96, 133, 154, 162, 166, 167, 195, 196, etc.)
6. \_\_\_\_\_ Public Schools called four witnesses: \_\_\_\_\_, Principal at \_\_\_\_\_ Educational Center; \_\_\_\_\_, Instructional Assistant of \_\_\_\_\_, \_\_\_\_\_, Director of Exceptional Education and Support Services, \_\_\_\_\_ Public Schools; and Ms. \_\_\_\_\_, mother of the child.
7. \_\_\_\_\_ testified as to her education, background and experience as a teacher. (Tr. 13-16). She also stated that approximately half of the 95 or so students had emotional problems with two grade levels in each class and up to 10 students per class .

(Tr.15-16). The child was one of these students. She noted that social skills were taught and applied at all times to help on behavioral issues in the school day. (Tr. 16). The child had a one-on-one adult assigned to her, \_\_\_\_\_, (Tr. 17). At \_\_\_\_\_, the child attended from the first day of school, September 2, 2003 until November 13, 2003. After that the mother refused to send her, but was not officially withdrawn until the end of December. (Tr. 18). The child was placed at grade level 4. According to teachers, the child disrupted the class room daily on a frequent basis. (Tr. 20). Strategies for helping the child were discussed with Ms. \_\_\_\_\_ and in her presence Ms. \_\_\_\_\_

\_\_\_\_\_ had reprimanded the child for her behavior, but it seemed to have no effect subsequently. (Tr. 21 – 23). The child was pulled from the classroom in October because of her disruptive behavior and placed one-on-one in a separate setting. (Tr. 21-22). Ms. \_\_\_\_\_

opined that the child would make progress at \_\_\_\_\_ if she attended classes, worked on her behavior and did the work required. She felt that the child would have to break her pattern of disruption and refusal to accept direction and complete her work. (Tr. 24-25). On cross-examination, Ms. \_\_\_\_\_ explained the various and varied techniques that were tried to keep the child on task, do her work so as to be able to show academic progress. (Tr. 25-29).

8. \_\_\_\_\_, an Instructional Assistant and the one-on-one individual with the child testified about her experiences at \_\_\_\_\_ as well as her background, training and experiences as a therapeutic foster parent with an oppositional defiant behavior child. (Tr. 31-34). She was with the child almost totally every day the child was at \_\_\_\_\_

\_\_\_\_\_. (Tr. 31-34). Ms. \_\_\_\_\_ testified that the child was defiant to authority in the classroom setting as well as in the one-on-one situations. The child was disruptive in the

classroom disturbing the other children, more so than any other children disrupting her; that she would sing, do flips, dance and refuse to do her work; that Ms. \_\_\_\_\_ would try a cooling off strategy and walk with her or go outside; that Ms. \_\_\_\_\_ would use reward techniques for good work and good behavior such as allowing her to work with the computer, which the child liked and other rewards. (Tr. 37 ff. ). There were daily lesson plans for academic endeavors that were prepared weekly, including language arts, math, science, etc.; and that those plans were keyed to the child's Individualized Educational Plan ("IEP") goals. (Tr. 24-36). The child would often comment that she was too tired and the work was too hard (Tr. 39) When placed in a separate area in an one-on-one situation the child would tell Ms. \_\_\_\_\_ that she didn't have to do anything Ms. \_\_\_\_\_ said and that Ms. \_\_\_\_\_ couldn't make her her do it. (Tr. 43). Ms. \_\_\_\_\_ felt that the child could have made more progress academically if she stayed on task. The child also would make "blunt" comments to Ms. \_\_\_\_\_ such as "... you have old wrinkled lips"; "you need to just go back home and relax with your husband because I don't want you here today" (Tr. 46-47). On cross examination, Ms. \_\_\_\_\_ said that the child learned some things but did not make a lot of progress due to behavioral problems and a great deal of time was spent on those. (Tr. 48-50). Ms, \_\_\_\_\_ related that a lot of time was spent on defiant behaviors here the child did flips, slid down a pole, beat on a computer top (Tr. 50-51). Also on cross examination Ms. \_\_\_\_\_ expressed that she did not feel that the child was in danger at \_\_\_\_\_ and that she had not seen another child hit her even though she was with her almost all the time except for bathroom breaks. (Tr. 52-61). There was some evidence that the child had said her mother told her to say or do certain things, but in her testimony, Ms. \_\_\_\_\_ stated that the mother had denied that and

that mother had admonished the child in her presence about being disrespectful to Ms. [redacted] (Tr. 52 ff).

9. Dr. [redacted] testified as to her education, background, teaching and administrative experience as well as her experience and scope of duties as Director of Exceptional Education and Support Services for [redacted] Public Schools (Tr. 139-143). Parent's counsel stipulated to her expertise in special education. (Tr. 143-144). Dr. [redacted] testified that in her opinion the child needed to have her behavioral aspects addressed first in order to appropriately access the academic opportunity available to her. (Tr. 153). She felt that homebound instruction was inappropriate for long-term progress in both behavioral and academic progress. It's used for short term issues involving health or placement changes (Tr. 154-155). Home schooling, Dr. [redacted] opined, would not be appropriate for the child because the needs of the child require varied services and programs that a parent would have a very difficult time addressing at home. (Tr. 155-156). Dr. [redacted] also testified that she felt that the statements made by a parent in the presence of the child both at home and in the presence of school administrators, teachers and staff; would affect the child's willingness to be compliant and follow direction within the school environment which would create a situation where the child would have less of an opportunity to receive academic benefit. (Tr. 59). Likewise, she felt that comments on the teachers being racist or mean to the child and the child not having to listen to them, sets up deviousness and the child would be inclined to believe that she does not need to listen to the instructional staff at school. (Tr. 157-158). The [redacted] Public School System had considered and continues to consider a private placement for the child at the [redacted]'s expense. (Tr. 160-161). Following a due process request by the parent

and mediation in that regard, an agreement was reached for the 2003-2004 school year with regard to the child. (Ex. 258). The agreement allowed for certain alternative placements, which the parties agreed were appropriate, one of which was not available ( Academy) and the other was, The School at , for the remainder of the 2003-2004 academic year. (Ex. 258). Dr. testified that the School was an appropriate placement because it met both of the child's behavioral and academic needs and the IEP was appropriate for the child. (Tr. 163-166). She also opined that the best outcomes for students occur when the parents and the school work in partnership, even if that means sometimes doing work that you may not want to do at the time. (Tr. 166-167). Dr. also said she felt that, without that agreement after mediation, that school was a proper placement and met the needs of the child but the parent did not agree. (Tr. 163-165).

10. Ms. , the mother of the child, testified at three different intervals in the hearing, twice being called by and once for herself. Ms. expressed displeasure that the child has fallen behind in her work in the course of her education in Public Schools. (Tr. 196 ff). She stated that the child had made relatively good grades early on but had fallen behind as she progressed through the various schools as well as home schooling. The child had been placed in special education with a Learning Disability ("LD") diagnosis in 2001. (Tr. 198). The child tested okay for her hearing (Tr. 199). She moved through various schools in 2000 and 2001. By September, 2001 and entry into the second grade at Elementary School, the child had already been in 6 placements including 4 different schools and two homebound instructions, including an extended year program homebound in Summer,



2001. (Ex.11). One school change was due to the family residence being moved (Tr. 199). The child was moved from \_\_\_\_\_ Elementary to \_\_\_\_\_ Elementary for a brief period in May, 2001 because \_\_\_\_\_ did not have self-containment for I.D. (Tr. 200). Shortly thereafter the child was taught in homebound instruction. (Ex. 1). The child next returned to \_\_\_\_\_ Elementary School in the second grade, according to her mother, despite some reservations, because it was closer to the family home. (Tr. 201). Ms. \_\_\_\_\_ testified that in that setting the child may have been kicked and hit; the child would come home with bruises, torn clothes and very upset; the child was placed with some Emotionally Disturbed (“ED”) children; and some children had used profanity on the phone with the child. (Tr. 201-202). She stated that her daughter was placed in handcuffs and taken to the mental health center to which Ms. \_\_\_\_\_ replied, “And I will sue you” (Tr. 202). From that point, the child was placed in homebound instruction. The homebound instruction was not satisfactory to Ms. \_\_\_\_\_ and the child returned to \_\_\_\_\_ Elementary School in September, 2001. (Tr. 204). Ms. \_\_\_\_\_ admitted that the child had problems with her behavior from as early as preschool (Tr. 206). “She (the child) would cry, throw things, hit back, things of that nature” (Tr. 206). In the first grade the child was tested for Attention Deficit Disorder (“ADD”) and was placed on medication – Ritalin and then subsequently Adderall (Tr. 206) but later her medication was removed. Ms. \_\_\_\_\_ attributed the child’s subsequent “aggressive” behavior to her experiences with her peers, her teachers and the handcuff incident at \_\_\_\_\_ (Tr. 207-209). She felt that the teachers and staff reacted to her letters and conferences by showing animosity to the child causing the child to be frustrated and act more aggressively. (Tr. 209). Ms. \_\_\_\_\_ felt that the child

was being treated differently than other children and felt this was due to her “advocacy” for her daughter and due to “racist issues” because the child was being treated differently (Tr. 209-210). Ms. [redacted] requested and received homebound instruction for the child again from February to March, 2002, and the child returned to [redacted] for the remainder of the school year (Ex. 1). There was some discussion between the mother and the LEA about a private placement, pursuant to an IEP meeting, for the child but the private placement considered, [redacted] Academy didn’t materialize at this time because the child was not accepted by [redacted] based on her file. (Tr. 216-217). The family then relocated to [redacted] and the child was placed in [redacted] Elementary School. (Tr. 217). The child remained there for the third grade, 2003 – 2003, but the behavioral problems deteriorated and the child “was suspended over 20-some odd times basically for what she said or what she did based on what”.....the mother... was told, and”... she even told the principal to shut up, which was disrespectful.” (Tr. 219) (Ex. 87, 94, 98, 100-110, 112-117, 119, 121-130, 132-135, 138, 140-141,143-149,151-155, 158-167, etc). During this period Ms. [redacted] filed two formal complaints to the Virginia Department of Education (Ex 184, 188), the first of which was decided in favor of the LEA (Ex. 190) and the other of which was resolved between the parties and dropped by Ms. [redacted] (Ex. 191). Ms. [redacted] felt that some of the suspensions were due to the principal’s animosity toward her (Tr. 218). Ms. [redacted] said she investigated each and every complaint, found some justified and others not, that she believed the child on some of the situations and did not on others. Ms. [redacted] stated that she reprimanded the child on some occasions and punished her on some (Tr. 219). The mother cited some field trips the child was not allowed to participate in and another episode of the child being

handcuffed by police officials after a behavior incident (Tr. 219-220). She felt that the child was disciplined and suspended for an inappropriate behavior while the other children were not similarly treated for inappropriate behavior. (Tr. 218-220). For the fourth grade, the child was placed in \_\_\_\_\_ Special Education Center (Tr. 220, Ex. 1). Ms. \_\_\_\_\_ testified that it was “a disaster” (Tr. 220). She stated that the child was placed with emotionally disturbed children and that some made obscene phone calls to the child at her home, used profanity at the school and that the child had picked up some of the words used. She talked to school officials about this. Ms. \_\_\_\_\_ stated that the child came home with work for school that she did not understand; she never brought books home; and that her daughter was hit at the school by another child (see Ms. \_\_\_\_\_’s testimony (supra). (Tr. 221-228). Ms. \_\_\_\_\_ then notified the school that her daughter would not return. Homebound instruction was requested but denied and Ms. \_\_\_\_\_ filed for due process. (Tr. 227-228). The child’s last day of attendance was November 13, 2003. (Ex. 1). Ms. \_\_\_\_\_ filed a letter of intent to home school the child and hired an attorney. (Tr. 228). The case went to mediation, with Ms. \_\_\_\_\_ represented by counsel and resulted in an agreement. (Ex. 258). On January 5, 2004, the IEP was developed and signed. (Ex. 259). Ms. \_\_\_\_\_ wanted the child to go to \_\_\_\_\_ Academy but there was no opening before the summer, 2004 session. (Tr. 228-229). Ms. \_\_\_\_\_, out of four choices picked the \_\_\_\_\_ School at \_\_\_\_\_ and checked out \_\_\_\_\_ prior to enrolling the child. (Tr. 229). Problems started immediately with Ms. \_\_\_\_\_ hearing children using profanity and expressing disappointment in the child’s teacher because he had hearing impairment (Tr. 229-232). On the third day of enrollment, Ms. \_\_\_\_\_ saw two teenagers at the school

fighting and cursing. The next day there were some of the child's classmates taunting her, telling her that they didn't want her in class and making personal remarks about her hair. Afterwards, there was a confrontation with the principal followed by the child returning in tears. (Tr. 234-235). Ms. [redacted] removed her child on the fourth day of her attendance (Tr. 235). Ms. [redacted] wishes to home school her child until June when she will know whether her child will be admitted to [redacted] and because she has been turned down by the LEA twice for homebound instruction (Tr. 235-236). She feels that the child will be safe at home and that her educational background is sufficient for home schooling (Tr. 237). Ms. [redacted] prefers [redacted] because she has visited there, despite the fact that she saw students acting inappropriately there. (Tr. 237-238) Ms. [redacted] agrees that the child needs structure and stability. (Tr. 238). She acknowledged that maybe she had ignored behavior issues with the child for the past three years (Tr. 240). The child is seeing a professional for her behavior; she was tested one month and has returned for one visit the next month and will see her on a monthly basis. (Tr. 241). Counsel for the parent noted that Dr. [redacted], the person who evaluated the child and is working with her presently quoted from the report (Ex. 260-261) that the child's "...recent experiences in different educational settings and her own behavioral failures have probably created severe negative expectations about school" (Tr. 243). Ms. [redacted] believes that [redacted] has the reputation and ability to turn the child's situation around. (Tr. 244-245).

Ms. [redacted] previously responded to questions by the LEA regarding the child's behavior and Ms. [redacted]'s role with the child's educational situation to date. (Tr. 65-110). Ms. [redacted] acknowledged that she made the educational decisions for

the child at the LEA and that she met with the IEP teams and had been involved in most of the decisions on placement. (Tr. 66-67). She answered with regard to the child's behavioral problems that both the child had problems and the school people made up some. (Tr. 68-69). She acknowledged the importance of parents supporting the school and the preparation of the parents to make sure the child comes to school prepared to work. (Tr. 69). Ms. [redacted] admitted that she told the child that teachers at Elementary were mean to her (Tr. 71). She also acknowledged that her child might possibly be lying in some cases. (Tr. 73). She also stated she investigated all of the events and tried to figure what the truth was. She listened to the child and to the school personnel. (Tr. 75). She stated that she could tell if the child was telling the truth or not. (Tr. 77). Ms. [redacted] admitted that she did tell the child once, in the presence of her principal, that the school people are at fault and the child hadn't done anything wrong. (Tr. 81-82). She stated that she never tore up the notes from school, even though the child told the principal that her mother did that (Tr. 83). Ms. [redacted] stated that she possibly could have told the child that her teachers were being "mean and nasty" but the child may have overheard her discussing that with the teachers. (Tr. 88). She admitted telling her daughter that white teachers are racist. (Tr. 89). She agreed that she had said to the child, in the presence of school personnel, "Don't worry, you're not in trouble. I know the adults pushed you into this". (Tr. 92). She acknowledged that she knew the child had a history of behavior problems going back to preschool. The mother blamed this on the child's association with other children. (Tr. 94). Ms. [redacted] would not concede that, given the child's history of behavior problems, her behavior in one-on-one situations away from the other children was because of her child's actions. (Tr. 97-98). Ms. [redacted]

admitted that her child had previously attended Academy for a week from February 24 through February 28 and had been removed from there for behavioral problems before the week was up. (Tr. 99-103). Ms. acknowledged that the child has overheard her talking to attorneys about legal action against Schools. (Tr. 106). She admitted that she had agreed that the School was an appropriate placement with advice of counsel and after she visited it. (Tr. 108, Ex. 258). Ms. admitted that she called the child's principal a racist at Elementary, told him he was "full of crap" and told the child not to listen to him because he was a racist. (Tr. 118-120).

11. The parent called as a witness. Mr. was the primary teacher at the School. Mr. testified that the child was in a class of five students; one boy, four girls. (Tr. 186). Besides the child, all of the others were regular education (Tr.187). The child also had a counselor assigned to her one-on-one. (Tr. 188). If there were any inappropriate or negative comments, then he would stop and try to instill on the child to make positive comments. (Tr. 190-191). He was aware that some of the other students made comments to the child that she was unwelcome. (Tr. 193). He was in the room when this occurred but did not see or hear any threats of violence. (Tr. 194). Mr. admitted that he was hearing impaired and sometimes had to read lips at a distance. (Tr. 194-195).

12. No one seriously challenged the current IEP for the child (Ex. 259). The mother's complaints were to placement and the particular circumstances, events and personalities at the placement.

## DISCUSSION

This Hearing Officer was presented with a disturbing record and testimony in this case. It is beyond cavil, on this record, that the child is defiant of authority; disruptive of herself and others and is in need of services to receive very much, if any, benefit from an education. The child has been in more geographic and academic placements (at 10 years of age) than most people encounter in a lifetime, including post-secondary education.

Both parties agree that the child needs stability and structure. Both agree that the behavior problems must be dealt with before much learning can occur. The child's test results show that she is educationally- delayed but the results do not have much probative value since the child will not stay on task to test, if she agrees to test at all. The LEA's witnesses agree that she could make educational progress if the behavior and her attendance would improve. The mother acknowledges at least some behavioral problems.

Although nearing the date for a decision by \_\_\_\_\_ Academy on the child's attending summer session there, this Hearing Officer is concerned with the "stay put" condition of the child being home schooled. To say the least, short of solitary confinement, home schooling provides the most restrictive environment for educational instruction to occur. The mother has testified that she has business interests at this time so her time would be restricted. Further, given the child's problems and apparent little progress, the Hearing Officer finds it hard to believe that anyone, even the mother here with a background of educational experience, could have the skills and training to effect behavioral and educational progress together on an on-going basis. Even if successful, this placement only allows the child social interaction with her siblings and relatives and denies her an opportunity to hone and refine social skills with her peers with varied backgrounds and at neutral locations.

This Hearing Officer does not conclude that this mother is a bad parent. To the contrary, she seems to care for the child and wants her to make academic progress. Like all parents who care, she wishes the child to be equal to or ahead of her peers in an academic environment. This Hearing Officer's concerns should and must be directed to the best interests of the child and make that decision in a fair and impartial manner regardless of the particular viewpoint of the parent or the LEA. The Individuals with Disabilities Education Act, 20 USC 1400 et seq. (the "IDEA") and its predecessors act, regulations, state law and regulations are the underpinning of Special Education in the nation and in Virginia. All of this law collectively grants all of the rights and duties discussed herein. The IDEA assumes (maybe naively) that parents will seek to do what is in the best interests of their children and provides little guidance in cases where they do not or their well-intended actions result in impeding the best interests of the child. That is our dilemma here. The mother has, inter alia, agreed to IEP's and selected from a continuum of placements and then when displeased, frustrated or exasperated, has pulled the child from the placement over periods ranging from four days to one year. She has utilized home-bound instruction to home schooling to nothing in this record to fill in the time gaps in academic years. The LEA has, in the main part been accommodating to these and school changes so long as the proper services could be accorded. The LEA has consented to one-on-one instruction and assistance, all the way to agreeing to provide free day school private placement. The mother is now seeking admission of the child to Academy, a private school, and believes that this will be the placement of success for her child. Such reasoning has to be the triumph of hope over extensive experience. The mother appears to be seeking an institution where children do not taunt each other, argue, fight or use profanity. She withdrew the child from the School primarily on that basis (after an IEP agreement, visits to the school and agreeing that it



was an appropriate placement) after 4 days of experience. The record indicates that the child previously had a brief, unsuccessful tenure at \_\_\_\_\_ Academy (due to behavior), that on a visit the mother heard children using profanity there and that Dr. \_\_\_\_\_ testified that \_\_\_\_\_ is not staffed or equipped to handle children with behavioral problems.

The mother has stated that she realizes that parents need to support proper school efforts of discipline and educational methodologies to allow students to learn and progress. Yet she admits to making remarks about teachers and staff being mean, racist, and so forth, in the presence of the child. She acknowledges that on several occasions she told the child she was not in trouble because of her behavior since the adults pushed her into it. She has admitted that the child may have heard similar remarks made by the mother when conferring with school officials or counsel on the telephone. The logical conclusion of all of this, and taking the record as a whole, is that the mother has placed some seeds of defiance in the child and has raised in the child an expectation that the child need not obey school personnel and need not fear punishment at home for those actions. This may have occurred unwittingly or intentionally on the part of the mother; but never the less, on this record, it appears apparent to even a non-trained educational or parental reader that the mother's words and actions have had a non-supportive effect on the education efforts on behalf of the child by the LEA. The child, by direction, by intuition, or by experience, has found that defiant and disruptive behavior result in getting her home or placing her in a new setting. This destroys stability and structure.

In the opinion of this Hearing Officer, given the child's age and miserable and unstable educational experience to date, the child is rapidly approaching the age and level of education where irreparable damage will be done to her formal educational future. All parties, including

the mother, need to cooperate, plan and guide the child's future educational experience to avert such a result.

The IDEA and its entire structure and process assure the parents participation in the spirit of the best educational interest of the child. It is an inclusive process and has been so in this case. However, if the parent has problems with placement and personnel as seems to be the case here, in this Hearing Officer's opinion, once a course of action has been decided and alternatives on placement have been chosen, the better approach for the parent to utilize within this framework to adjust the program or the personnel would appear to use the IEP committee and the LEA administration to make adjustments or to "fine tune" the process. To unilaterally withdraw the child from the placement (particularly in 4 days) undermines the entire effort for structure and stability. If the parent is not part of the solution then the parent is part of the problem. Time is running out for this child to return, as far as possible, to a beneficial and "normal" educational experience.

#### CONCLUSIONS OF LAW

1. That the Hearing Officer has jurisdiction over the parties and the matters contained herein.
2. That all parties agree that there are no questions of notice to the parent or procedural violations of FAPE.
3. That the child is in need of special education and services under IDEA and the related regulations, federal and state.
4. Regarding FAPE and the LEA's burden to show that it was provided;

The seminal and remaining case law of FAPE and the test therefore is set forth in Board of Education v. Rowley, 458 U.S. 176 (1982) decided by the United States Supreme Court.

As set forth in Rowley, there is a two-pronged test for providing the child with FAPE as required by the IDEA:

- A. Has the LEA complied with the procedures as set forth in the Act and the resulting regulations? Since there is no challenge here (see Conclusion No. 2) we proceed to
- B. Is the IEP developed by the LEA through the Act's procedures reasonably calculated to enable the child to receive educational benefits?

As seen in the Findings of Facts herein and in the transcript, herein, the LEA conceded that the child has not benefited as much as would have been possible; the mother believes the child has received little or no benefit. That is not the test in Rowley, however. The test is simply, given the IEP, is it reasonably calculated to enable the child to receive educational benefits? There is no attack on this issue by the mother and Dr. \_\_\_\_\_, as an expert in Special Education, testified that it is calculated to address the child's behavioral problems and to enable the child to receive educational benefit. Other LEA witnesses concurred. There is no challenge to free public education herein.

That the LEA has provided FAPE according to the text set forth in Rowley (supra).

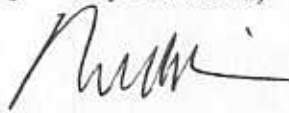
5. That the LEA has substantially prevailed herein.
6. That the placement of the child under an IEP acceptable program in either the School at \_\_\_\_\_ or the \_\_\_\_\_ Special Education Center is a proper placement alternative. A placement at the \_\_\_\_\_ Academy may be proper if that institution has the ability and the expertise to deal with the behavioral problems identified herein to insure educational progress within the IEP requirements.

7. The Hearing Officer makes no ruling on home schooling herein because it exceeds the jurisdiction of this proceeding, but it appears to the Hearing Officer to be problematic in the long run based on the evidence produced herein.
8. That the decision by the Hearing Officer is final and binding on all parties, unless any party aggrieved by the findings and decisions of this hearing brings civil action in any State court of competent jurisdiction within one year or in the proper federal district court.

ORDER

Therefore, in light of all the foregoing it is hereby ORDERED that the Public Schools, with lawful notice to the parent, shall cause an appropriate IEP meeting to be held forthwith to develop a program for \_\_\_\_\_, that provides FAPE in her classifications, for the remainder of this school year and beyond, and to ascertain the best available placement for the child now and in the future.

Respectfully submitted,



Raymond E. Davis  
Hearing Officer

April 15, 2004

The undersigned hereby certifies that he has mailed, postage paid, a true and correct copy of this Decision to Counsel of Record for the parent and the LEA, to the Director of Exceptional Education and Associated Services of the LEA and to the Virginia Department of Education.



---

Raymond E. Davis